

# **EXHIBIT A**

# ***AIPLA***

## **Report of the Economic Survey**

### **2005**

**PREPARED UNDER DIRECTION OF  
LAW PRACTICE MANAGEMENT COMMITTEE**

**American Intellectual Property Law Association**

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# **AIPLA**

## **REPORT OF THE ECONOMIC SURVEY 2005**

**PREPARED UNDER DIRECTION OF THE  
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION  
LAW PRACTICE MANAGEMENT COMMITTEE**

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September 2005

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## TYPICAL COSTS OF LITIGATION

Survey participants were asked to provide cost estimates, *but only for the types of litigation they had personal knowledge of, either as a service provider (attorney in private practice) or as a purchaser (corporate counsel), and were engaged in recently.* "Total cost" was requested, including outside legal and paralegal services, local counsel, associates, paralegals, travel and living expenses, fees and costs for court reporters, photocopies, courier services, exhibit preparation, analytical testing, expert witnesses, translators, surveys, jury advisors, and similar expenses.

The following table reports typical litigation costs for Patent Infringement, Trademark Infringement, Trademark Opposition/Cancellation, Copyright Infringement, Trade Secret Misappropriation, Interference, and Inter Partes Reexamination.

TYPICAL LITIGATION COSTS	\$000's		
	2001	2003	2005
<b>PATENT INFRINGEMENT SUIT</b>			
LESS THAN \$1 MILLION AT RISK			
End of discovery	\$250	\$290	\$350
Inclusive, all costs	499	500	650
\$1-\$25 MILLION AT RISK			
End of discovery	\$ 797	\$1,001	\$1,250
Inclusive, all costs	1,499	2,000	2,000
MORE THAN \$25 MILLION AT RISK			
End of discovery	\$1,508	\$2,508	\$3,000
Inclusive, all costs	2,992	3,995	4,500
<b>TRADEMARK INFRINGEMENT SUIT</b>			
LESS THAN \$1 MILLION AT RISK			
End of discovery	\$102	\$150	\$200
Inclusive, all costs	230	298	300
\$1-\$25 MILLION AT RISK			
End of discovery	\$299	\$365	\$400
Inclusive, all costs	502	602	700
MORE THAN \$25 MILLION AT RISK			
End of discovery	\$ 502	\$ 599	\$ 750
Inclusive, all costs	1,001	1,006	1,250
<b>TRADEMARK OPPOSITION/CANCELLATION</b>			
End of discovery	\$35	\$50	\$50
Inclusive, all costs	50	78	80
<b>COPYRIGHT INFRINGEMENT SUIT</b>			
LESS THAN \$1 MILLION AT RISK			
End of discovery	\$101	\$101	\$138
Inclusive, all costs	200	249	250
\$1-\$25 MILLION AT RISK			
End of discovery	\$202	\$298	\$250
Inclusive, all costs	400	499	440
MORE THAN \$25 MILLION AT RISK			
End of discovery	\$400	\$501	\$550
Inclusive, all costs	750	950	975

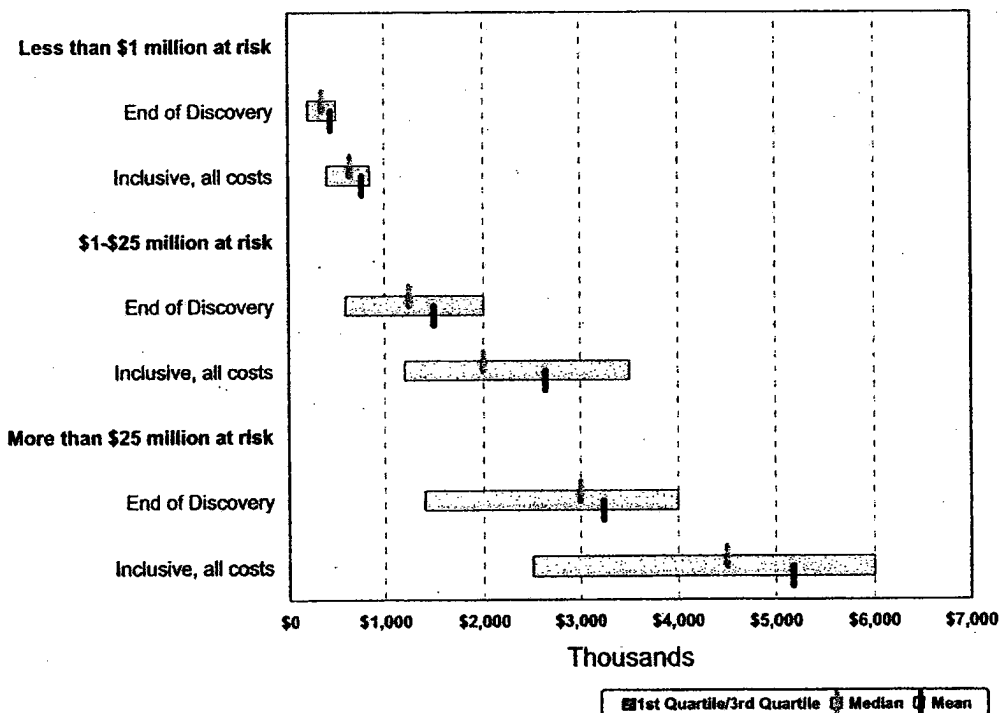
**TYPICAL LITIGATION COSTS**

\$000's

(CONTINUED)

	2001	2003	2005
<b>TRADE SECRET MISAPPROPRIATION SUIT</b>			
<b>LESS THAN \$1 MILLION AT RISK</b>			
End of discovery	\$126	\$199	\$200
Inclusive, all costs	251	350	300
<b>\$1-\$25 MILLION AT RISK</b>			
End of discovery	\$400	\$499	\$ 500
Inclusive, all costs	699	875	1,000
<b>MORE THAN \$25 MILLION AT RISK</b>			
End of discovery	\$ 700	\$ 998	\$1,000
Inclusive, all costs	1,009	1,749	2,000
<b>INTERFERENCE</b>			
End of discovery	\$100	\$113	\$300
Inclusive, all costs	201	302	600
<b>INTER PARTES REEXAMINATION</b>			
Through request	NA	NA	\$20
Inclusive of first patent owner response	NA	NA	\$30
Inclusive of all patent owner responses	NA	NA	\$40
Inclusive of an appeal to the board	NA	NA	\$52
Inclusive of an appeal to federal court	NA	NA	\$95

**ESTIMATED TOTAL COST OF A  
PATENT INFRINGEMENT SUIT (P. I-108 to I-110, Q42a-Q42f)**



### Typical Costs of Litigation

**Litigation-Patent Infringement >\$25M End of Discovery (Q42e)**

Total Cost		Litigation-Patent Infringement >\$25M End of Discovery				
		Number of Individuals	Mean (Average)	First Quartile 25%	Median (Midpoint)	Third Quartile 75%
All Individuals		294	\$3,239,136	\$1,400,000	\$3,000,000	\$4,000,000
Type of Practice	1-5 Attorneys	25	\$2,127,000	\$500,000	\$2,000,000	\$2,750,000
	6-75 Attorneys	124	\$3,058,871	\$1,000,000	\$2,350,000	\$4,000,000
	76 or more Attorneys	58	\$3,888,793	\$3,000,000	\$3,000,000	\$3,125,000
	All Corporate	74	\$3,472,040	\$1,500,000	\$3,000,000	\$5,000,000
Location	Boston CMSA	14	\$2,528,571	\$1,375,000	\$2,500,000	\$3,000,000
	NYC CMSA	35	\$4,135,742	\$2,000,000	\$4,000,000	\$5,000,000
	Philadelphia CMSA	29	\$2,793,103	\$2,650,000	\$3,000,000	\$3,000,000
	Washington, DC CMSA	25	\$4,468,000	\$3,000,000	\$4,000,000	\$5,000,000
	Other East	13	\$1,680,769	\$775,000	\$1,200,000	\$2,050,000
	Metro Southeast	11	\$7,118,182	\$2,000,000	\$3,000,000	\$8,000,000
	Other Southeast	7	\$1,921,429	\$500,000	\$1,000,000	\$3,000,000
	Chicago CMSA	33	\$2,664,545	\$1,900,000	\$2,500,000	\$3,500,000
	Minne.-St. Paul PMSA	8	\$2,218,750	\$1,200,000	\$1,500,000	\$4,000,000
	Other Central	34	\$1,876,471	\$500,000	\$1,125,000	\$3,000,000
	Texas	24	\$2,917,708	\$1,075,000	\$2,750,000	\$4,000,000
	Los Angeles CMSA	16	\$2,121,875	\$1,000,000	\$1,875,000	\$3,000,000
	San Francisco CMSA	20	\$5,710,000	\$2,275,000	\$3,000,000	\$3,875,000
	Other West	23	\$3,247,826	\$2,000,000	\$3,000,000	\$3,000,000

**Litigation-Patent Infringement >\$25M Inclusive, all costs (Q42f)**

Total Cost		Litigation-Patent Infringement >\$25M Inclusive, all costs				
		Number of Individuals	Mean (Average)	First Quartile 25%	Median (Midpoint)	Third Quartile 75%
All Individuals		299	\$5,175,753	\$2,500,000	\$4,500,000	\$6,000,000
Type of Practice	1-5 Attorneys	26	\$3,548,077	\$937,500	\$2,750,000	\$5,000,000
	6-75 Attorneys	123	\$5,044,715	\$2,250,000	\$4,000,000	\$5,000,000
	76 or more Attorneys	60	\$5,640,833	\$4,000,000	\$5,000,000	\$5,375,000
	All Corporate	77	\$5,710,390	\$3,000,000	\$5,000,000	\$8,000,000
Location	Boston CMSA	14	\$4,107,143	\$2,875,000	\$3,750,000	\$5,250,000
	NYC CMSA	35	\$6,190,000	\$4,000,000	\$5,000,000	\$8,000,000
	Philadelphia CMSA	28	\$4,712,500	\$4,400,000	\$5,000,000	\$5,000,000
	Washington, DC CMSA	24	\$6,947,917	\$4,500,000	\$6,000,000	\$7,750,000
	Other East	13	\$3,076,923	\$2,000,000	\$3,000,000	\$3,250,000
	Metro Southeast	11	\$9,440,909	\$1,500,000	\$4,500,000	\$11,000,000
	Other Southeast	7	\$3,342,857	\$1,000,000	\$2,500,000	\$4,000,000
	Chicago CMSA	34	\$4,404,412	\$3,000,000	\$4,450,000	\$5,187,500
	Minne.-St. Paul PMSA	9	\$3,688,889	\$2,150,000	\$3,000,000	\$5,000,000
	Other Central	35	\$3,258,571	\$1,000,000	\$2,000,000	\$5,000,000
	Texas	24	\$4,993,750	\$2,200,000	\$4,900,000	\$6,750,000
	Los Angeles CMSA	18	\$4,866,667	\$2,075,000	\$3,000,000	\$5,000,000
	San Francisco CMSA	21	\$7,985,714	\$3,000,000	\$5,000,000	\$6,000,000
	Other West	24	\$5,283,333	\$2,750,000	\$5,000,000	\$5,750,000



# **EXHIBIT B**

10 27 05 (from Cisco)  
From: DOMGWIA.Internet.jessica.davis@weil.com  
Sent: Thursday, October 27, 2005 7:52 PM  
To: Williamson, John  
Cc: JBlumenfeld@MNAT.com  
Subject: Telcordia v. Cisco

Attachments: Mime.822

John:

As a result of the recent teleconference with the Court in the Telcordia v. Lucent case, we expect Telcordia will promptly supplement its responses to Cisco's interrogatories and its document production consistent with the Court's rulings. In particular, we expect that Telcordia will supplement its discovery as follow:

1. Telcordia will produce all documents and things relating to Telcordia's analyses of Cisco's accused products as part of Telcordia's OSMINE testing and certification process and Telcordia's sale of its products as compatible with Cisco's accused products, including documents showing what Telcordia knew about Cisco's accused products, the individuals with this knowledge, and when Telcordia became aware of this information. We will agree that outside counsel for Telcordia can collect these documents from Telcordia employees for the sole purpose of producing them in the Telcordia v. Cisco litigation without violating any contractual obligations to Cisco.

2. Telcordia will supplement its response to Cisco's Interrogatory No. 8 to provide Telcordia's earliest claimed conception and reduction to practice dates. As the Court held, Telcordia's response that the claimed inventions were conceived and reduced to practice "at least as early as" the filing dates of the patents in suit is not appropriate. Telcordia must promptly identify the earliest conception and reduction to practice dates it intends to rely on at trial. As you know, the Court rejected Telcordia's strategy of waiting to see what prior art the defendants identify before providing definite dates.

3. Telcordia will supplement its response to Cisco's Interrogatory No. 7 to provide the dates by which Telcordia claims it became aware of Cisco's alleged infringement of each of the asserted patents. Telcordia's response to this interrogatory discusses pre-suit communications with Cisco, but does not identify the dates by which Telcordia is claiming it became aware of Cisco's alleged infringement as the Court ordered Telcordia to do in the Lucent case.

Please let us know by when we can expect this information.

Thanks,  
Jessica

Jessica L. Davis  
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< END >

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Page 1

10 27 05 (from Cisco)  
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# **EXHIBIT C**

**Williamson, John**

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**From:** jessica.davis@weil.com  
**Sent:** Friday, February 09, 2007 3:39 AM  
**To:** Dunner, Don; Anzalone, Steven; Williamson, John; SBalick@ashby-geddes.com  
**Cc:** steven.cherny@lw.com; Sasha.Mayergoyz@lw.com; sean.pak@lw.com; David.McKone@lw.com; david.nelson@lw.com; JBlumenfeld@MNAT.com; lpelizoti@mnat.com; jshaw@ycst.com; matthew.powers@weil.com; edward.reines@weil.com; sonal.mehta@weil.com  
**Subject:** Defendants' Draft Proposed Pretrial Order (Email 3 of 4)  
**Attachments:** #264454 v3 - Exhibit I3A -- Preliminary Jury Instructions.doc; #263932 v5 - Exhibit I3 B -- Final Jury Instructions and Comments.doc; #264469 v4 - Exhibit I4 -- Proposed Verdict Form.doc; Pretrial Order\_#264446.DOC; #264681 v2 - Exhibit G -- Special Damages.doc

Counsel:

Attached please find Defendants' draft of the proposed Pretrial Order.

Jessica L. Davis  
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5/29/2007

### **5.5 PATENT EXHAUSTION (DISPUTED)**

#### **Plaintiff's Instruction**

Cisco alleges that Telcordia's patent infringement claims are barred by the doctrine of patent exhaustion. To establish patent exhaustion, Cisco must show that Telcordia unconditionally licensed its patent to a third party, and that Cisco is entitled to the benefit of that license because it bought licensed components of its product from the licensed third party supplier. For example, Cisco contends that it bought licensed "off-the-shelf" chips from a licensed supplier, and therefore it should not be subject to further license obligations to Telcordia.

**Source:** *LG Electronics, Inc. v. Bizcom Electronics, Inc.*, 453 F.3d 1364, 1369-70 (Fed. Cir. 2006).

#### **Defendants' Objections**

Cisco objects to Telcordia's proposed instruction as unnecessary because Cisco is not pursuing a patent exhaustion defense.

### 5.3 IMPLIED LICENSE (DISPUTED)

#### Plaintiff's Instruction

Cisco alleges that Telcordia's patent infringement claims are barred by implied license. Cisco asserts that any infringement in this case should be excused because Telcordia granted an implied license to Cisco under the patents. An implied license may only be found, however, where Telcordia exhibited language or conduct from which Cisco may properly have inferred that Telcordia consented to Cisco's use of the patents. And, Cisco must have acted as a direct consequence of Telcordia's conduct or language. Thus, an implied license cannot arise out of Cisco's unilateral expectations or even reasonable hopes. Cisco must have been led to take action by Telcordia's actions. Accordingly, if Cisco was unaware of the conduct which supposedly created the license, or Cisco did not act in response to such conduct, there can be no finding of implied license.

**Source:** *De Forest Radio Telephone Co. v. United States*, 273 U.S. 236, 241 (1927); *Stickle v. Heublein, Inc.*, 716 F.2d 1559; *Wang Labs., Inc. v. Mitsubishi Electronics America, Inc.*, 103 F.3d 1571, 1580-81 (Fed. Cir. 1997); *Bandag, Inc. v. Al Bolser's Tire Stores, Inc.*, 750 F.2d 903, 925 (Fed. Cir. 1984).

#### Defendants' Objections

Cisco objects to Telcordia's proposed instruction as unnecessary because Cisco is not pursuing an implied license defense.

# **EXHIBIT D**





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JOHN M. WILLIAMSON  
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August 5, 2005

Edward R. Reines, Esq.  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065

*via email*

Telcordia Technologies, Inc. v. Cisco Systems, Inc.

Dear Ed:

We write concerning (1) the status of Cisco's document production, and (2) Telcordia's 30(b)(6) notice of deposition to Cisco. As you are aware, we have asked Cisco to agree to a date for the mutual substantial completion of document production. We are, however, not only concerned about Cisco's reluctance to cooperate in establishing an appropriate time frame for document production, but also about the deficient content of Cisco's production.

To date, Cisco has only produced nine boxes of documents and, by any standard, those nine boxes do not fully respond to Telcordia's discovery requests. Cisco's production of technical documents is incomplete and its production of financial documents is nonexistent.

Cisco appears to have only produced the manuals and documentation that it provides to customers, not the type of documents Cisco used to build its products. Missing from Cisco's production are, for example, technical documents showing (1) Cisco's internal communications (including e-mails) concerning its products, (2) Cisco's communications with component suppliers, (3) Cisco's communications with customers concerning its products, and (4) documents created by Cisco's engineers when designing its products (such as engineering specifications, board layouts, bills of materials, and schematics).

Moreover, Cisco has produced no financial documents, no purchasing data relating to its suppliers, no sales data, and no licensing agreements at all. We recognize that Cisco is producing documents on a rolling basis, and we expect Cisco to cure these, and all other, deficiencies with its future document productions. If, however, you believe that Cisco has completed its production on the topics identified in this letter, and you do not intend to produce additional documents responsive to the above categories, please let us know by no later than August 9, 2005.

HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

Edward R. Reines, Esq.  
August 5, 2005  
Page 2

Finally, during a telephone call with Richard Rainey, you have indicated that Cisco does not intend to produce a witness in response to Telcordia's July 22, 2005, 30(b)(6) deposition notice on the noticed date. Please provide an alternative date by no later than August 9, 2005.

Very Truly Yours,



John M. Williamson

# **EXHIBIT E**



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john.williamson@finnegan.com

September 27, 2005

Sonal N. Mehta, Esq.  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065

*via email*

Telcordia Technologies, Inc. v. Cisco Systems, Inc.

Dear Sonal:

Further to our letter of August 5, 2005, the status of Cisco's production of documents and information remains deficient as to certain broad categories of responsive documents. We are aware that Cisco will, pursuant to our agreement, produce documents and information on a rolling basis to be substantially completed by October 31, 2005. In this regard, Telcordia expects that Cisco's production will include, for example, technical documents showing (1) Cisco's internal communications (including emails) concerning its products, (2) Cisco's communications with component suppliers, (3) Cisco's communications with customers concerning its products, and (4) documents created by Cisco's engineers when designing its products (such as engineering specifications, board layouts, bills of materials, and schematics). At this point, we believe Cisco has not produced these types of documents. Moreover, Cisco has not produced significant financial documents, such as, for example, purchasing data, sales data, and licensing agreements.

Also, it appears that Cisco has produced voluminous electronic files in hard copy form. Telcordia expects that Cisco will produce relevant electronic files, such as those tracking sales information by product number for example, in electronic form.

Please let us know, by no later than October 3, 2005, whether Cisco is collecting and intends to produce the types of documents and information referenced in this letter and in our letter of August 5, 2005. If Cisco intends to withhold any of the types of documents and information identified in our letters, please explain the basis for withholding the production.

Very Truly Yours,

A handwritten signature of John M. Williamson in dark ink, written over the typed name.

John M. Williamson

# **EXHIBIT F**

**WEIL, GOTSHAL & MANGES LLP**

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November 14, 2005

**VIA E-MAIL**

John Williamson, Esq.  
Finnegan Henderson Farabow  
Garrett & Dunner LLP  
901 New York Avenue NW  
Washington, DC 20001-4413

Re: *Telcordia v. Cisco, C.A. No. 04-876-GMS*

Dear John:

I write in response to your letter of November 4, 2005. Pursuant to our agreement, Cisco has worked in good faith to substantially complete its document production by October 31, and, as explained in my letter of October 6, 2005, we believe that our production as of October 31 resolved the issues raised in your September 27 letter. To the extent questions or concerns remain, we propose that the parties meet and confer after they have had the opportunity to review each other's productions as of October 31.

Very truly yours,



Sonal N. Mehta